

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RABIEH ALAWAD,
Petitioner,
v.
FRED FIGUEROA, *Warden*; GREGORY
ARCHAMBEAULT, *Field Office*
Director, U.S. Immigration and Customs
Enforcement; et al.,
Respondents.

Case No.: 3:16-CV-2227-JAH-BLM

**ORDER DISMISSING AS MOOT
PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C §
2241**

INTRODUCTION

Pending before the Court is Rabieh Alawad’s (“Petitioner”) Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (*See* Petition, ECF No. 1). The Petition is fully briefed. (*See* ECF No. 3, 4, 6, 8, 9). Upon review of the parties’ submissions, and for the reasons set forth below, the Court **DENIES as moot** the Petition for Writ of Habeas Corpus.

BACKGROUND

Petitioner is a Syrian national, and in March of 2016 traveled with his family via Mexico seeking refuge “from religious and political persecution” in the United States at the San Ysidro, California, Port of Entry. (ECF No. 1 at 3). There, Petitioner presented himself to a United States Customs and Border Patrol official and requested asylum. (*Id.*) Petitioner was detained in Otay Mesa and his family was transferred to a residential center

1 in Dilley, Texas. (*Id.*) Petitioner’s wife was interviewed by an asylum officer with the
 2 U.S. Citizenship and Immigration Service (CIS) who determined she had “a credible fear
 3 of persecution and torture and issued a positive fear determination[.]” (*Id.*) On April 7,
 4 2016, a CIS asylum officer interviewed Petitioner and consolidated his application with his
 5 wife’s asylum application. (*Id.* at 4). Petitioner was subsequently put in removal
 6 proceedings by the San Diego Immigration Court, where he requested discretionary parole.
 7 (*Id.*) Petitioner’s request was denied. (*Id.*) Petitioner later appeared before an Immigration
 8 Judge (“IJ”) asserting the IJ possessed jurisdiction to hold a bond determination hearing
 9 under *Matter of X-K-*, 23 I&N Dec. 731 (BJA 2005)¹ under section 235(b)(1)(A) of the
 10 Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1)(A) (2000). (*Id.* at 5). DHS
 11 opposed the request, and the Immigration Judge subsequently denied Petitioner’s request.
 12 (*Id.*)

13 The instant petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 was
 14 filed with this Court on September 2, 2016. (*See generally* ECF No. 1). Relevant here,
 15 Petitioner requested relief in the form of a bond redetermination hearing or an immediate
 16 release from custody. (*Id.* at 7). An appeal of the Immigration Judge’s decision was
 17 pending with the Board of Immigration Appeals at the time of Petitioner’s filing. (*Id.*)
 18 Respondents filed a return arguing the Immigration Judge lacked jurisdiction until
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 21 ¹ In *Matter of X-K-*, the Board of Immigration Appeals held that an asylum seeker who is initially placed
 22 in expedited removal proceedings under INA § 235(b)(1)(A), 8 U.S.C. § 1225(b)(1)(A), but who then is
 23 placed in regular removal proceedings under INA § 240, 8 U.S.C. § 1229a proceedings after a positive
 24 credible fear determination, is eligible for a bond hearing before an IJ unless the alien is a member of
 25 any of the listed classes of aliens who are specifically excluded from the custody jurisdiction of IJs
 26 pursuant to 8 C.F.R. § 1003.19(h)(2)(i). In re *Matter of X-K-*, 23 I&N Dec. 731 (BJA 2005). The
 27 Attorney General later issued a self-certification finding *Matter of X-K-* to have been “wrongly decided”
 28 and overruling it. *Matter of M-S-*, 27 I. & N. Dec. at 510. In *M-S-*, the alien was transferred from
 expedited to full removal proceedings after establishing a credible fear, and an IJ ordered his release on
 bond. The Attorney General disagreed with the BIA’s statutory interpretation in *Matter of X-K-* and
 concluded that the “text ... mandate[d]” the conclusion that “aliens who are originally placed in
 expedited proceedings and then transferred to full proceedings after establishing a credible fear ...
 remain ineligible for bond, whether they are arriving at the border or are apprehended in the United
 States.” *Matter of M-S-*, 27 I. & N. Dec. at 515.

Petitioner was in custody for six-months², a threshold not met at the time of filing. (*See* Resp. Return, ECF No. 3). Petitioner appeared before an Immigration Judge on October 12, 2016, for a bond hearing. (*Id.* at 2).

Petitioner filed a reply in support of his petition but did not specifically address his upcoming bond hearing, only to say he has exhausted his administrative remedies, and a failure to do so is not required to seek relief under § 2241. (*See* Pet. Reply, ECF No. 4). Rather, Petitioner reasserted his challenge to 8 C.F.R. 1003.19(h)(2)(i)(B) as *ultra vires* and unconstitutional.³ (*Id.*)

On October 14, 2016, the Court requested both parties to file a status report by October 28, 2016, addressing the status of the Petitioner's immigration proceedings. (Order for Status, ECF No. 5). Respondents filed a status report stating Petitioner appeared before the Immigration Judge for a bond hearing on October 12, 2016, and was released on bond that same day. (Resp. Status Rep., ECF No. 6). Respondents argued that Petitioner's petition should be dismissed as moot because he was released from custody. (*Id.*) Petitioner failed to file a status report. Thereafter, the Court directed Petitioner file a supplemental brief to address whether his petition was now moot. (Order for Supp. Brief., ECF No. 7).

On November 15, 2016, Petitioner filed a supplemental brief where he argued (1) his release does not make his Petition moot since he is subject to detention at any time; (2) his petition is not moot as it alleges constitutional and legal violations that are capable of

² This argument has been dismissed by the Supreme Court in *Jennings v. Rodriguez*, where the Court found, "Nothing in § 1226(a)'s text—which says only that the Attorney General 'may release' the alien 'on ... bond'—even remotely supports the imposition [of periodic bond hearings every six months]. Nor does § 1226(a)'s text even hint that the length of detention prior to a bond hearing must specifically be considered in determining whether the alien should be released." 138 S. Ct. 830, 847-48 (2018). The Court declined to engage further in any bail-related constitutional argument.

³ "Upon expiration of the Transition Period Custody Rules set forth in section 303(b)(3) of Div. C. of Pub. L. 104–208, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens: . . . (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act[.]" 8 C.F.R. 1003.19(h)(2)(i)(B).

1 repetition yet evading review, and; (3) administrative remedies are inadequate, and a
 2 showing of irreparable injury should not be required. (*See* Pet. Supp. Brief, ECF No. 8).
 3 Respondents argued (1) no collateral consequence exists to be redressed by way of the
 4 Habeas petition; (2) Petitioner does not challenge the Immigration Judge’s bond decision;
 5 and (3) Petitioner incorrectly suggests that Respondents would ignore the Immigration
 6 Judge’s bond decision and act unlawfully. (*See* Resp. Supp. Brief, ECF No. 9).

7 **LEGAL STANDARD**

8 Under 28 U.S.C. § 2241, district courts have jurisdiction to consider a habeas
 9 petition brought by a federal pretrial detainee. *See McNeely v. Blanas*, 336 F.3d 822, 824
 10 (9th Cir. 2003); *Hoyle v. Ada Cty.*, 501 F.3d 1053, 1058 (9th Cir. 2007). Pursuant to section
 11 2241(c)(3), a district court may grant a writ of habeas corpus to a federal detainee “in
 12 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
 13 § 2241(c)(3).

14 **ANALYSIS**

15 **I. Mootness**

16 Petitioner seeks relief in the form of a bond redetermination hearing or an immediate
 17 release from custody. As noted above, Petitioner appeared before an Immigration Judge
 18 for a bond hearing on October 12, 2016, and was released on a \$1500 bond that same day.
 19 (ECF Nos. 6, 9). Petitioner’s release from custody renders his petition moot. *See Abdala*
 20 *v. I.N.S.*, 488 F.3d 1061, 1063064 (9th Cir. 2007) (“[F]or a habeas petition to continue to
 21 present a live controversy after petitioner’s release. . . there must be some remaining
 22 ‘collateral consequence’ that may be redressed by success on the petition.” (citation
 23 omitted.))

24 Petitioner contends this Court maintains jurisdiction on the basis of collateral legal
 25 consequences, and wrongs capable of repetition, yet evading review. (ECF No. 8 at 7-11).
 26 However, Petitioner has not demonstrated that he will suffer any remaining legally
 27 cognizable collateral consequences and asserts no other viable collateral consequences that
 28 his original petition could have redressed, as he was granted a bond redetermination

1 hearing as requested. As such, “there [is] no extant controversy for the district court to act
 2 upon.” *Abdala*, 488 F.3d at 1065. Furthermore, there is no reasonable expectation that
 3 Petitioner would be unlawfully detained in the future. If Petitioner’s bond was revoked, it
 4 would be based on new justifications, at which time he can bring a new habeas petition.
 5 *See, e.g., Murphy v. Hunt*, 455 U.S. 478, 482–84 (1982) (declining to apply exception even
 6 when the plaintiff had suffered an initial injury because the possibility of recurring injury
 7 was speculative); *see also Spencer*, 523 U.S. at 17-18 (“[Petitioner] has not shown (and we
 8 doubt that he could) that the time between parole revocation and expiration of sentence is
 9 always so short as to evade review. Nor has he demonstrated a *reasonable likelihood that*
 10 *he will once again be paroled and have that parole revoked.*” (emphasis added)).

11 **II. Due Process Challenge**

12 “Freedom from imprisonment—from government custody, detention, or other
 13 forms of physical restraint—lies at the heart of the liberty that [the Fifth Amendment's Due
 14 Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner was
 15 granted a bond determination hearing and is no longer detained and, therefore, his due
 16 process challenge is also moot. *See Moses v. Lynch*, 2016 WL 2636352 (D. Minn. April
 17 12, 2016), report and recommendation adopted, 2016 WL 2596020 (D. Minn. May 5, 2016)
 18 (“[w]hen immigration officials reach continued-custody decisions for aliens who have been
 19 ordered removed according to the custody-review procedures established in the Code of
 20 Federal Regulations, such aliens receive the process that is constitutionally required.”).
 21 Absent a showing that there was a violation of the established regulatory framework, the
 22 Court does not see any basis to find a violation of Petitioner’s due process rights.

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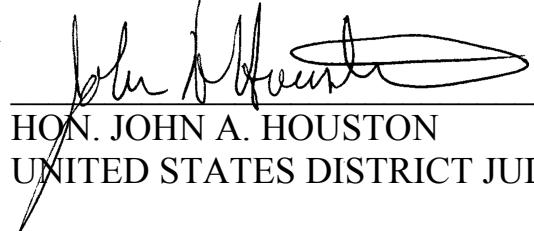
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CONCLUSION

Based on the foregoing reasons, Petitioner's petition for habeas relief pursuant to U.S.C. 2241 is **DISMISSED as moot**.

IT IS SO ORDERED.

DATED: March 30, 2021



HON. JOHN A. HOUSTON
UNITED STATES DISTRICT JUDGE